

BRANCH GUIDANCE LETTER (BGL) 10-02**SUBJECT: STANDARD OPERATING PROCEDURE (SOP) FOR EPA
COORDINATION WITHIN THE PORTLAND HARBOR SUPERFUND SITE**

- 1. Background.** The U.S. Environmental Protection Agency Region 10 (EPA) identifies contaminated sites for the National Priorities List (NPL). These NPL sites are designated for cleanup of hazardous substances and pollutants, and contaminants pursuant to the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also known as Superfund. EPA is the lead agency for selecting in-water response actions at the Portland Harbor Superfund Site (PHSS). Under a Memorandum of Understanding, the Oregon Department of Environmental Quality has been given the lead for upland source control actions within the PHSS. In the Portland District (District), EPA has placed the Portland Harbor Superfund Site (PHSS) on the National Priorities List. The PHSS is located on the Willamette River between River Miles 0 and 12.

It is anticipated that the Record of Decision (ROD) for the PHSS will be signed sometime in 2012. After the ROD is signed, EPA will begin remedial action design and implementation. Contamination remedies throughout the site may vary, and could include: dredging and removal of contaminated sediments (to an upland location), isolation of sediments by capping in-place, monitored natural recovery, upland source control measures, and other remedies as deemed suitable by EPA. Specific abatement actions in highly contaminated locations may take priority. Cleanup actions will occur over a period of years following the ROD. As actions are completed, institutional controls would be put in place in perpetuity, as necessary, to protect sediment caps, stabilize shoreline areas, and other constructed remedies.

Regulatory Project Managers should be aware that CERCLA contains a “federally permitted release” defense for potentially responsible parties (PRPs) who may be liable for performing cleanup at the PHSS. This means that a PRP may not be liable for response costs or for performing cleanup if a Federal agency issues a permit to them to do an action and the permitted activity causes or exacerbates pollution releases. Therefore, it is critical that Portland District (NWP) coordinate with EPA for all permit actions and unauthorized activities situated within the PHSS.

- 2. Coordination Process.** For any complete application or pre-dredge notices for authorized maintenance dredging activities received, or for alleged violations identified¹, the Regulatory Project Manager shall ascertain if that work would occur in or affect the PHSS. If the proposed work would occur in or affect the PHSS, then the Regulatory Project Manager will conduct the following coordination procedures:

¹ All permit and enforcement actions in or near the PHSS should be coordinated with EPA’s Environmental Review and Sediment Management Unit. In addition to dredging, other types of projects may affect subsequent cleanup efforts (e.g., an overwater structure that is built over contaminated sediment would make cleanup more difficult).

- a. The Regulatory Project Manager shall ensure that the permit application is complete per 33 CFR 325.1(d), prior to initiating coordination with the EPA. Using the attached form, email or fax notification shall be submitted to the attention of: Manager of the Environmental Review and Sediment Management Unit (Christine Reichgott), Office of Ecosystems, Tribal, and Public Affairs at the EPA (email: freedman.jonathan@epa.gov; fax: 206.553.1775; phone: 206.553.0266).

The form shall include the project description (dredge prism dimensions; type, composition, and quantity of dredged material; dredging method; and the site and plans for disposal of the dredged material) and the project location. The Regulatory Project Manager shall provide a copy of the complete application, a vicinity map, and key project drawings (top and cross-sectional views).

Superfund coordination with EPA should be run concurrently with tribal coordination efforts and can be initiated prior to posting a public notice for an individual permit (including letters of permission). The Regulatory Project Manager shall copy their Section Chief on the coordination email. For email notification, all materials shall be submitted in *.pdf format to the EPA.

The Regulatory Project Manager shall enter this coordination effort into the ORM Regulatory database as an "External Agency Coordination," and close the action once final EPA concurrence or comments have been received.²

- b. In turn, EPA will strive to respond expeditiously to the Corps' coordination requests within 30 days of receipt, and identify potential issues with the project within the purview of their Superfund authority. In order for EPA to respond within the 30-day timeframe, they must receive all information requested for their review. The EPA shall also collaborate with the Regulatory Project Manager to provide specific language for permit special conditions in coordination with the permit applicant.
- c. No decision shall be made to issue a permit, or resolve a violation, in the PHSS until the Corps receives an email or fax response from EPA. If the EPA does not respond, it is incumbent upon the Regulatory Project Manager to complete this coordination loop. If the Regulatory Project Manager does not receive a timely response (>30 days) from EPA, he shall notify his direct supervisor to facilitate completion of coordination.
- d. If the Corps issues a permit for an action in the PHSS, the Regulatory Project Manager shall submit a copy of the permit (with attachments) to the EPA.
- e. Upon completion of the permit review, if the Corps determines that it is appropriate to deny the permit, the Regulatory Project Manager shall provide a copy of the denial letter to the EPA (see EPA's address below).

² Coordination efforts with the Portland District Project Review Group should be recorded as "External Agency Coordination" actions in ORM, separate from the CERCLA Coordination with EPA.

3. **Permit Conditions.** Crafting the permit conditions for projects in the PHSS should be a collaborative process between the Corps and EPA in coordination with the permit applicant. When the Regulatory Project Manager decides to issue a permit, or move forward with a violation resolution, he shall continue to coordinate with EPA as necessary, to add any special conditions.

Unless, in specific circumstances, other conditions are necessary or revised language is appropriate, the following condition should be added to every permit issued within the PHSS that has the potential to release hazardous substances:

By accepting this permit, the permittee (<<Permittee name>>) agrees that this permit does not waive, exclude or create any defense to or for any liability for response costs or natural resource damages under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or the State of Oregon Revised Statutes (ORS Chapter 465) and associated Oregon Administrative Rules. The permittee further agrees to be financially responsible for any additional or incremental costs associated with the construction and/or operation of the permitted <<structure/activity>>, and any additional or incremental costs occasioned or caused by the permitted <<structure/activity>> in the implementation of any response action selected for the Portland Harbor Superfund Site in Portland, Oregon.

In addition, for all permitted projects within the PHSS, the Corps shall add the following special condition:

The permittee shall notify the Portland District Regulatory Branch and Environmental Protection Agency (Region 10) at least two weeks prior to when the activities authorized in waters of the U.S. are scheduled to begin. Separate notifications shall be mailed to the following addresses:

U.S. Army Corps of Engineers
Portland District - CENWP-OD-GC
Permit Compliance, <<NAME >> County
P.O. Box 2946
Portland, Oregon 97208-2946

AND

U.S. Environmental Protection Agency, Region 10
Office of Ecosystems, Tribal, and Public Affairs
Attn: Jonathan Freedman
1200 Sixth Avenue, Suite 900, ETPA - 083
Seattle, Washington 98101-1128

4. **Applicability.** This SOP primarily covers coordination procedures in the PHSS. However, these procedures can also be applied to Regulatory permit actions situated in or near other CERCLA sites within the Portland District. Appropriate changes should be made to the attached coordination form to reflect the correct CERCLA site. Sites on EPA's National Priorities List may be found at the following link:
<http://yosemite.epa.gov/r10/cleanup.nsf/webpage/Oregon+Cleanup+Sites>

Regulatory Project Managers should be aware that activities undertaken entirely on a CERCLA site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. Refer to Regulatory Guidance Letters (RGLs) 85-07 and 89-03 for further guidance.

This guidance is retroactive for all active permit actions and after-the-fact permit actions in the PHSS that have not yet been finalized in the ORM database. Regulatory Project Managers should reissue notification for active permit and after-the-fact permit applications as of the date of this BGL using the procedures highlighted above.

5. **Points of Contact.** Questions regarding this BGL should be addressed to the appropriate section chief or the Branch's Sediment Evaluation Specialist (McMillan).



Erik S. Petersen
Chief, Regulatory Branch

Attachment



FAX NOTIFICATION:
PORTLAND DISTRICT PERMIT NO. NWP-XXXX-XXXXX
<<PROJECT NAME>>
REQUEST FOR COMMENTS ON
PROPOSED WORK IN THE PORTLAND HARBOR CERCLA AREA

Date:

To: Christine Reichgott, Manager of the Environmental Review and Sediment Management Unit
EPA, Region 10, Office of Ecosystems, Tribal, and Public Affairs
email: freedman.jonathan@epa.gov; phone: 206.553.0266; fax: 206.553.1775

From: Corps of Engineers, Portland District, Regulatory Branch;
Project Manager: <<PM Name>>; email: PMname@usace.army.mil; phone: (503) 808-####;
fax: (503) 808-4375

Applicant: <<POC Name, Title, Organization>>

Location: The project is located on the <<East / West bank>> of the Willamette River, River Mile X.X,
Portland, Multnomah County, Oregon (Section XX, Township 1 N, Range 1 X)

Project Purpose: [example: Maintenance and repair of existing pier.]

Type of Permit: [example: IP, LOP, NWP (no. and name), or ATF-permit type]

Brief Work Description: [example: Repair and replace 28 existing deteriorated timber pile caps and piling with plastic and steel piles. **If the proposed activity is a maintenance activity and would not change the configuration of an existing structure or work, then the Regulatory PM should make that point clear.**]

Attached: [example: Joint Permit Application + 4 pages of drawings, project description and construction details (pp. 2-3, 14-16, *Maintenance Repairs, Biological Evaluation*, September 2009)]

AGENCY RESPONSE:

Date of Faxed Response: _____

Name: _____

Comments:

EMAIL TEMPLATE

Address to: freedman.jonathan@epa.gov

Cc: Section Chief

Subject Line: CERCLA COORD. REQUEST: Portland Harbor (LWR, RM X.X), Corps Project No. NWP-XXXX-XXX, <<Project Name>>, <<activity/structure>>

Dear Ms. Reichgott and Mr. Freedman:

The Corps has received an application for work proposed in / near the Portland Harbor CERCLA Site. We request that you review the attached, scanned copy of the permit application and figures. We are seeking input on permit conditions that will minimize the effects of action in the CERCLA Site. A brief summary of the project and a list of attachments appear below.

Applicant: <<POC Name, Title, Organization>>

Location: The project is located on the <<East / West bank>> of the Willamette River, River Mile X.X, Portland, Multnomah County, Oregon (Section XX, Township 1 N, Range 1 X)

Project Purpose: [example: Maintenance and repair of existing pier.]

Type of Permit: [example: IP, LOP, NWP (no. and name), or ATF-permit type]

Brief Work Description: [example: Repair and replace 28 existing deteriorated timber pile caps and piling with plastic and steel piles. **If the proposed activity is a maintenance activity and would not change the configuration of an existing structure or work, then the Regulatory PM should make that point clear.**]

Attached: [example: Joint Permit Application + 4 pages of drawings, project description and construction details (pp. 2-3, 14-16, *Maintenance Repairs, Biological Evaluation*, September 2009)]

Thank you for taking time out of your busy schedule to review this project. Please respond to this coordination request in 30 calendar days. If you have any questions regarding this project, please contact me at the number below.

Sincerely,

<<PM Name>>

Regulatory Project Manager

<<Email signature w/ contact information>>

<<Do not forget your attachments>>